



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 10

1200 Sixth Avenue, Suite 900  
Seattle, Washington 98101-3140

AUG 11 2008

Reply To  
Attn Of: ETPA-088

Ref: 01-062-AFS

Kimberly D. Nelson  
District Ranger  
Salmon-Cobalt Ranger District  
311 McPherson St.  
Salmon, Idaho 83467

Dear Ms. Nelson:

The EPA has reviewed the final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for **Idaho Cobalt Mine Project (ICP)** in accordance with our responsibilities under the National Environmental Policy Act (NEPA) and Section 309 of the Clean Air Act. Section 309, independent of NEPA, specifically directs EPA to review and comment in writing on the environmental impacts associated with all major federal actions. Under our policies and procedures, we evaluate the document's adequacy in meeting NEPA requirements. The purpose of this letter is provide EPA comments after our review of the final EIS and to inform you of our commitment to participate in the Interagency Task Force (ITF) for continued work in addressing outstanding environmental matters on this project.

On August 9, 2006, EPA signed a Memorandum of Understanding to be a cooperating agency for the ICP EIS. We became a cooperating agency because of EPA's pending decision regarding a National Pollutant Discharge Elimination System (NPDES) permit for the project and so that the EIS could serve to fulfill our NEPA compliance responsibilities (40 CFR Part 6).

We have appreciated the opportunity to work with the Forest Service early in the process and through the development of the EIS. The Forest Service has worked diligently with the Interagency Team in developing alternatives for the EIS and mitigation measures to minimize environmental impacts of the Preferred Alternative. We also appreciate the Forest Service coordination with EPA to ensure that the NEPA process and EIS will meet our NEPA compliance needs.

The FEIS evaluates the No Action Alternative (Alternative I) and four action alternatives for the development of two underground mines, a waste disposal site, and associated facilities in the Salmon-Challis National Forest. The ROD selects Alternative IV with modifications to Formation Capital Corporation's (FCC) proposed plan that include design modifications, operational components, mitigation and monitoring plans intended to minimize the risk of adverse impacts to the environment. Alternative IV in the ROD includes a detailed list of

“Stipulations, Mitigations and Monitoring Programs” and a list of “Permits, Licenses and Authorizations” that are needed to implement the decision.

The ROD discusses creation of an ITF and the Forest Service has requested EPA participate on the ITF. We would like to acknowledge the Forest Service’s foresight in identifying that long term interagency coordination and involvement is necessary to meet the goal of adequate natural resource protection. We expect to be involved in reviewing the detailed work plans and monitoring plans required in the ROD and in ongoing review of monitoring results through mine construction, operations, and closure. It will be critical to ensure that components such as the groundwater capture system are designed, operated, and maintained such that appropriate water quality is maintained. The function of the ITF must be clearly defined so that the agencies can effectively work through potentially complex and technical issues. Our EPA contacts for the ITF are Fran Allans at (208) 378-5778 and Lori Cora at (206) 553-1115. We look forward to future discussions regarding the logistics, function and funding of the ITF. We also appreciate the other items included in the list of agreements and stipulations in the ROD that would need to occur before the plan of operations can be approved and believe that it is helpful in understanding the various components and agencies’ and parties’ responsibility in the project development.

The FEIS resolved our draft EIS concerns regarding lack of information and potential impacts to fishery resources and cultural resources. The FEIS included a discussion of the Biological Assessment/Biological Evaluation for the ICP and the ROD requires implementation of the Terms and Conditions stipulated by NOAA and USFWS in their Biological Opinions (BO). Furthermore, we appreciate the inclusion of the BOs as appendices in the FEIS. The FEIS also includes more detailed information on impacts to cultural resources and summarizes the outcome of Government to Government Consultation with the Tribes. The FEIS states that the Tribes did not identify specific resources within the area of operation that they would like to access, and if the Tribes identify such resources at a later date, access accommodation will be made while maintaining a safe working environment.

We would like to clarify that a few of the responses in the Response to Comments in Appendix D of the FEIS appear to respond to comments on the draft NPDES permit. EPA’s permit-specific response will appear in the Response to Comments accompanying the final permit and the following responses were stated by Idaho Department of Environmental Quality: responses page D-61, responses to two comments page D-64, and response to third comment page D-67.

As you are aware, EPA raised concerns on the draft EIS and issues with the preliminary final EIS based on potential environmental concerns due to the lack of information on financial assurance, adequate mitigation and associated potential impacts to the Blackbird Mine Superfund Site, impacts to fishery resources and cultural resources. From our review on the FEIS and ROD, EPA has continuing environmental concerns regarding the lack of information on financial assurance that we requested be in the FEIS and concerns regarding lack of specificity on trigger levels for monitoring and mitigation measures. The following paragraphs discuss continuing concerns on these matters.

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## **Financial Assurance**

One of our main concerns on the draft EIS was that the financial assurance estimate and detailed information of components that would be included in the estimate were not in the draft EIS. We were assured by the Forest Service that this information would be included in the FEIS and believed this issue was resolved when the information was included in the preliminary final EIS that we reviewed in May. However, this information was removed from the final EIS and instead the final EIS included language similar to the draft. We strongly support the inclusion of the bond estimate of \$44 million in the ROD and line items that will be covered by the bond, including long term water treatment. However, we believe the supporting information and basis for the estimate should have also been included in the FEIS as it was in the preliminary FEIS since that information included line item estimated costs of bond components (see Table 1 attached for the line items that should be included in the final calculation and original estimate). We are reiterating the comment we made on the draft EIS based on the exclusion of detailed financial assurance information in the FEIS:

“Our main environmental concern is the lack of information about financial assurance, specifically, the lack of information about the assumptions, cost estimates, and plans for long-term water management and other reclamation activities associated with the project. A key component of evaluating environmental impacts of mining projects is the information on which the effectiveness of closure and reclamation activities is based. As we have consistently stated since the early scoping phase of this project, we feel that this information is critical to include in the EIS because of the need to disclose potential environmental risks to the public, to provide assurance that significant environmental impacts will be avoided and that mitigation measures, operation and maintenance, and closure/post closure activities will be adequately bonded if the company fails to meet its requirements. This is especially crucial because of the potential for perpetual water treatment this project may require, and because there is an ongoing Superfund cleanup occurring at the site.”

We appreciated the opportunity to independently review the detailed bond estimate prepared for the preliminary draft EIS and provide comments to the Forest Service. EPA hired a contractor to independently review the cost estimate to assure ourselves that all necessary cost items and figures were accurately representing the costs of future environmental impacts if sufficient money were not available to the US government. From this independent review of the estimate, EPA supported the approximate amount of \$43.6 million based on labor and equipment costs at the time the estimate was prepared. The preliminary final EIS included an estimate well above this figure and a summary table updating the information we previously had independently verified. It is our understanding that this estimate was higher than the estimate we reviewed based on potential future costs increasing including travel costs. The Forest Service's ROD includes a financial assurance estimate of \$44 million plus or minus 20 percent and a bulleted list of general components that would be covered, including long-term water treatment. We understand that the final bond amount may increase from the ROD estimate based on these factors.

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### **Mitigation/Monitoring**

We are supportive of the modeling analysis and the work that went into designing mitigation measures. However, there is an inherent uncertainty with the modeling and the water quality predictions. To work towards addressing these uncertainties and concerns we had recommended that the EIS include more detailed information on the designs of mitigation measures and groundwater capture system. This specific information was not included in the FEIS. We acknowledge that the ROD requires FCC to develop a plan for the capture system and we anticipate review of the plan and design of the ground water capture system to be able to verify that the system can operate successfully. The FEIS and ROD also did not incorporate the CERCLA 2003 Record of Decision surface water and sediment performance standards as either performance standards or triggers for monitoring and mitigation measures as requested. We understand that FCC will be drafting more specific work plans to implement the approved Plan of Operations and that specific performance standards can be included in the future work plans. As we stated previously, the ITF will be critical in reviewing these follow up plans and monitoring.

### **Blackbird Mine CERCLA Site**

We acknowledge statements in the ROD and agree that this project does not permit the release of hazardous substances to the environment that would require a response action or result in the incurrence of response costs under CERCLA. We support the inclusion of the list of agreements and working with us to support the goals of the clean up action. We believe it is important to understand the design of the capture systems for the Sunshine and Ram mines to be able to critically review whether or not the systems can operate successfully. We believe this level of detail will be addressed with the ITF to discern if commingling with Blackbird Mine site Group's system may occur. If commingling of hazardous substances occurs, CERCLA agreements or orders likely will be necessary to address the situation.

Thank you for the opportunity to comment on the FEIS and ROD. Please feel free to contact me at (206) 553-1601 or email at [reichgott.christine@epa.gov](mailto:reichgott.christine@epa.gov) or Lynne McWhorter of my staff at (541) 754-4834 or by email at [mcwhorter.lynne@epa.gov](mailto:mcwhorter.lynne@epa.gov) with any questions you may have.

Sincerely,



Christine Reichgott, Manager  
NEPA Review Unit

Enclosure

cc:

EPA Idaho Operations Office

Ray Henderson, US Forest Service Salmon-Challis National Forest

| TABLE 1. FINANCIAL ASSURANCE ESTIMATE SUMMARY                            |  |  |              |
|--|--|--|--------------|
| Direct Costs   |  |  |              |
| INTERIM OPERATIONS AND MAINTENANCE (two years)                           |  |  |              |
| HAZARDOUS MATERIALS REMOVAL AND DISPOSAL                                 |  |  |              |
| WATER TREATMENT  |  |  |              |
| DEMOLITION AND DISPOSAL  |  |  |              |
| SITE WORKS   |  |  |              |
| Borrow Sites   |  |  |              |
| Portals  |  |  |              |
| Roads  |  |  |              |
| TWSF   |  |  |              |
| Water Management Pond  |  |  |              |
| Millsite and Tram  |  |  |              |
| REVEGETATION   |  |  |              |
| GROUNDWATER CAPTURE  |  |  |              |
| POST CLOSURE O & M   |  |  |              |
| Indirect Costs   |  |  |              |
| Engineering Redesign   |  |  |              |
| Mob/Demob  |  |  |              |
| Contract Administration  |  |  |              |
| Contingencies  |  |  |              |
| Insurance  |  |  |              |
| Bond (performance)   |  |  |              |
| Bond (payment)   |  |  |              |
| Contractor Profit  |  |  |              |
| Indirect Agency Overhead   |  |  |              |
| Post Closure Water Treatment Costs                                       |  |  |              |
| POST CLOSURE WATER TREATMENT (NPV - beginning second year after closure) |  |  |              |
| Overhead and contingency   |  |  |              |
|  |  |  |              |
|  |  |  |              |
| Total Direct and Indirect Cost Estimate                                  |  |  | \$43,670,124 |